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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	Magistrate Docket No.
	Case No. '08 MJ 0718
Plaintiff,	
	COMPLAINT FOR VIOLATION OF:
v.	**Title 8, U.S.C., Section 1326**
CESPEDES-Saldivar, Hilario	
	Deported Alien Found in the United States
	(Felony)
Defendant,	

FILED
08 MAR -6 PM 1:41
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

The undersigned complainant, being duly sworn, states:

On or about March 5, 2008, within the Southern District of California, Defendant Hilario CESPEDES-Saldivar, an alien, who previously had been excluded, deported and removed from the United States to Mexico, was found in the United States, without the Attorney General or his designated successor, the Secretary of the Department of Homeland Security (Title 6, United States Code, Sections 202(3) and (4), and 557), having expressly consented to the defendant's reapplication for admission into the United States; in violation of Title 8, United States Code, Section 1326.

And the complainant states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.

Special Agent Michael Haynes
U.S. Immigration & Customs Enforcement

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 6th DAY OF MARCH 2008.

Hon. Cathy A. Bencivengo
U.S. Magistrate Judge

STATEMENT OF FACTS

Hilario CESPEDES-Saldivar came to the author's attention pursuant to the author's duties with U.S. Immigration and Customs Enforcement (hereinafter referred to as ICE). On the afternoon of March 5, 2008, the author was contacted by ICE Special Agent Michael Willever and notified that CESPEDES had been encountered by local law enforcement in the 1000-block of North Santa Fe Drive in Vista, California. After being informed by Deputy Sheriff P. Michalke that CESPEDES was a previously deported alien, Special Agent Willever requested that CESPEDES be detained until his arrival in Vista. While Special Agent Willever ascertained alienage, deportability, detained and transported CESPEDES, the author conducted records checks to further confirm the information provided by Deputy Michalke.

Automated records maintained by the Department of Homeland Security revealed that CESPEDES is a native and citizen of Mexico, born April 3, 1985. These same records indicate that an immigration judge ordered CESPEDES deported from the United States to Mexico during removal proceedings on December 6, 2005, and that CESPEDES was removed from the United States to Mexico on December 24, 2007, through the port at San Ysidro, California.

At approximately 3:00 p.m. on the afternoon of March 5, 2008, Special Agent Willever arrived at the San Diego federal building with CESPEDES, and the author read to CESPEDES his constitutional rights per "Miranda" in the English language. When asked if he understood his rights, CESPEDES responded in the affirmative. He again responded in the affirmative when asked if he was willing to answer the author's questions at that time.

During the interview that followed, CESPEDES claimed to be a citizen of Mexico born on April 3, 1985, in Puebla, Mexico. He further admitted to having been deported several months ago and to have most recently achieved reentry to the United States through a mountainous area near Tecate, California. He further claimed that he reentered the United States by passing beneath the international border fence during hours of darkness on an unknown date in February. He denied having applied for permission to lawfully return to the United States after deportation.

A subsequent review of documents from CESPEDES alien file was consistent with the aforementioned automated records. The author reviewed a form I-213 (Record of Deportable/Inadmissible Alien), dated December 24, 2007, that identifies CESPEDES as a native of Mexico, born April 3, 1985. Further, the author observed an immigration judge's order of removal dated December 6, 2005, and a form I-205 (Warrant of Deportation/Removal) executed on December 24, 2007. It is this latter form that documents CESPEDES' physical removal from the United States to Mexico on December 24, 2007, through the port at San Ysidro, California.

A review of records maintained by the U.S. Department of Homeland Security yields no indication that CESPEDES has applied for or received permission to reapply for admission to the United States after deportation.